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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,919	05/15/2001	Karl-Heinz Baumann	225/49907	7559

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EXAMINER	
DUONG, THO V	
ART UNIT	**PAPER NUMBER**
3753	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/854,919	BAUMANN ET AL.	
	Examiner	Art Unit	
	Tho v. Duong	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8 and 12* is/are allowed.

6)☒ Claim(s) *1-7,9-11 and 13-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt of applicant's amendment filed 9/20/2005 is acknowledged. Claims 1-19 are pending.

Response to Arguments

Applicant's arguments filed 9/20/2005 have been fully considered but they are not persuasive. Applicant's argument that Cutler and Kawaguchi fails to disclose guides defined as one part with the wall region has been very carefully considered but is not deemed to persuasive (See the rejection bellow).

Though claim 7 has been written in independent form, the subject matter in the intervening claim 2 has not been incorporated into claim 7. Therefore, claim 7 is now rejected under the new ground of rejection of Cutler.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4-7 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by H. Z. Cutler (US 1,593,242). Cutler discloses (figures 1-4) a heat exchanger arrangement on a front carrying structure of a motor vehicle, the front carrying structure (1) having a passage orifice (12) of a cooling air stream, which extends in a vehicle transverse plane and is delimited on two mutually opposite sides by wall regions (wall of casing 1) of the carrying structure; the heat

exchanger arrangement comprising a heat exchange module (radiator, which is a cooling water circuit of an engine) which largely overlaps the passage orifice (12) and which is mounted on the front carrying structure in such a way that, in the event of a head on collision subjecting a region of the passage orifice to stress, the radiator while absorbing impact energy, is capable of cooperating reinforcingly with the wall regions of the carrying structure because the radiator is secured on the front wall with peripheral flange (40) partially cover the wall region; an entire longitudinal extent of an end regions (19) of the radiator are received and fasten in sliding guides (36) define by the carrying structure; and the end regions (19) project beyond the passage orifice into the sliding guide section (36); the radiator is capable to be pushed with the end regions (19) in a manner of a drawer into the guides (36) and secured in a pushed-in position via fixing elements (38). Cutler further discloses (figures 1-2 and page 2, lines 47-88) that the guides (36) are capable of permitting an up and down movement of the radiator due to the shape of slots (37) on the flange and the radiator has a clearance between itself and the passage orifice. The up and down movement is considered to be a direction parallel to the front wall. Regarding claim 4, the front carrying structure comprising a large size front wall (wall of casing 1), and the passage orifice is formed in a middle of the casing wall. Regarding claim 5, the method of forming the device "extruded" is not germane to the issue of patentability of the device itself. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

In this case, the casing wall (1) has a one-piece structure, which is structurally the same with the claimed front wall because the extruded profile is a one-piece structure profile. Regarding the limitation of "guides defined as one part with the front wall", applicant is reminded that the limitation in the claim should be interpreted as broadly as it reasonably allows. Therefore, it is reasonably to interpret that guides (36) is defined as one part with the front wall (wall of casing 1) since the guides (36) attached on the front wall and forming one supporting part for the radiator.

Claims 1-4,6,13 and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawaguchi et al. (US 4,742,881). Kawaguchi discloses (figures 1-6, and column 3, lines 9-12) a heat exchanger arrangement on a front carrying structure of a motor vehicle, the front carrying structure (2-5) having a passage orifice of a cooling air stream, which extends in a vehicle transverse plane and is delimited on two mutually opposite sides by wall (2a) of the carrying structure; the heat exchanger arrangement comprising a heat exchange module (radiator (6), which is a cooling water circuit of an engine) which largely overlaps the passage orifice and which is mounted on the front carrying structure in such a way that, in the event of a head on collision subjecting a region of the passage orifice to stress, the radiator while absorbing impact energy, is capable of cooperating reinforcingly with the wall regions of the carrying structure because the radiator is secured on the front wall with brackets (10) attached the wall region; an entire longitudinal extent of an end regions (7) of the radiator are received and fasten in guides (10,11) define by the carrying structure; and the end regions (7) project beyond the passage orifice into the guide section (10,11). Kawaguchi discloses (column 3, lines 9-12) that the guides (10,11) are provided for lateral movement and element (11e) is there to prevent any excessive

lateral movement (emphasis added). Regarding claim 4, the front carrying structure comprising a large size front wall (wall of casing 1), and the passage orifice is formed in a middle of the casing wall. Regarding claim 5, the method of forming the device "extruded" is not germane to the issue of patentability of the device itself. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this case, the casing wall) has a one-piece structure, which is structurally the same with the claimed front wall because the extruded profile is a one-piece structure profile. Regarding the limitation of "guides defined as one part with the front wall", applicant is reminded that the limitation in the claim should be interpreted as broadly as it reasonably allows. Therefore, it is reasonably to interpret that guides (10,11) is defined as one part with the front wall (wall of casing 1) since the guides (10,11) connecting with the front wall to form one supporting part for the radiator.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over H. Z. Cutler in view of Ikeda et al. (US 5,271,473). Cutler substantially discloses all of applicant's claimed invention as discussed above except for the limitation that a further heat exchange module is arranged in a region of overlap with the heat exchange module in front of the front wall. As regarding the limitations of "the heat exchange module is arranged in front of the passage orifice" and "a further heat exchange module", it is well known in the automobile art that an assembly of a radiator and condenser is positioned in front of the engine compartment. Attention is now directed to Ikeda. Ikeda discloses (figure 2 and column 1, lines 12-52 and column 3, line 60-column 4, line 2) a heat exchanger module assembly that has an assembly of a radiator (17), which is to cool engine coolant, and a condenser (18), which is mounted on and in front of the front wall (15), for the purpose of providing an air conditioning system for the vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Ikeda's teaching in Cutler's heat exchanger assembly arranged on the front carrying structure of a motor vehicle for providing an air conditioning system for the vehicle.

Allowable Subject Matter

Claims 8 and 12 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Blau can be reached on 571-272-4406. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tho v Duong
Primary Examiner
Art Unit 3753

TD

TD
December 9, 2005